269.

SUPREME COURT OF THE UNITED STATES.

No. 172.

JAMES C. ACHISON, PLAINTIFF IN ERROR,

vs.

JONATHAN HUDDLESON.

IN ERROR TO THE COURT OF APPEALS, FOR THE WESTERN SHORE OF MARYLAND.

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GIDEON, Printer.

The United States of America, to Jonathan Huddleson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the court of appeals, for the Western Shore of the State of Maryland, wherein Jas. C. Achison is plaintiff in error, and you are defendant in error; to show cause, if any there be, why the judgment rendered against the said James C. Achison, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal, this seventeenth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

R. B. TANEY. [L. S.]

I hereby acknowledge the service of the above citation on me as counsel for Jonathan Huddleson, on this 27th day of November, 1849.

THOMAS J. McKAIG,
Attorney for J. Huddleson.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the court of ap-
[L. S.] peals, for the Western Shore of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the court of appeals, for the Western Shore of the State of Maryland, before you, or some of you, wherein James C. Achison is plaintiff in error, and Jonathan Huddleson is defendant in error, a manifest error hath happened, to the great damage of the said James C. Achison, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-eight.

THOMAS SPICER,
Clerk circuit court U. S., for Maryland dist.

Issued 17th November, 1849.
Allowed. R. B. TANEY.
Filed 3d December, 1849.

MARYLAND, *sct.*

At a court of appeals of the State of Maryland, one of the United States of America, begun and held for the Western Shore of the said State, at the city of Annapolis, on the first Monday of December, being the fourth day of the said month, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the independence of the United States.

Present, the honorable Thomas Beale Dorsey, chief judge; Ezekiel F. Chambers, Asa Spence, Alexander C. Magruder, Robert N. Martin, William Frick, judges; Richard W. Gill, clerk.

In the record of proceedings of the same court were had, among other, the following, to wit:

JAMES C. ACHISON
vs.
JONATHAN HUDDLESON, superintendent of that part of the United States road within the limits of the State of Maryland.

Be it remembered, that now here, on the second Monday in June, being the eighth day of the said month, in the year of our Lord one thousand eight hundred and forty-six, the chief judge and associate judges of the fifth judicial district of Maryland, in pursuance of the directions of the act of assembly in such case made and provided, transmit to the court of appeals here the record of proceedings of a plea which was lately depending before them in the county court of Allegany county, between Jonathan Huddleson, superintendent of that part of the United States road within the limits of the State of Maryland, plaintiff, and James C. Achison, defendant; and wherein the said county court gave judgment for the said Jonathan Huddleson, superintendent as aforesaid, against the said James C. Achison, and from which said judgment, the said James C. Achison appealed to the court of appeals here; the tenor of which said record of proceedings is in form following, to wit:

STATE OF MARYLAND,
Allegany county, to wit:

At a county court of the fifth judicial district of the State of Mary-

land, begun and held at the court-house, in the town of Cumberland, on the third Monday of April, and twentieth day of the same month, in the year of our Lord one thousand eight hundred and forty-six.

Were present, the honorable Robert N. Martin, esq., chief judge; Thomas Buchanan, esq., and Richard H. Marshall, esq.; Henry Bruce, clerk; Moses Rawlings, esq., sheriff.

In the record of proceedings of the same court, amongst others were the following, to wit:

JONATHAN HUDDLESON, superintendent of that part of the United States road within the limits of the State of Maryland,
vs.
LUCIUS W. STOCKTON and JAMES C. ACHISON.

Be it remembered, that heretofore, to wit, on the 27th day of September, in the year of our Lord one thousand eight hundred and forty-three, Jonathan Huddleson, superintendent of that part of the United States road, within the limits of the State of Maryland, by Thomas J. McKaig and William W. McKaig, esqs., his attorneys, prosecuted and sued forth out of Allegany county court here the writ of the State of Maryland of capias ad respondendum, directed to the sheriff of the county aforesaid, in the words following, to wit:

[SEAL.] ALLEGANY COUNTY, *to wit:*

The State of Maryland, to the sheriff of Allegany county, greeting:

We command you, that you take Lucius W. Stockton, Moor N. Falls, Daniel Moore, and James C. Achison, late of Allegany county, trading under the firm and style of Stockton, Falls & Company, if they shall be found in your bailiwick, and them safe keep so that you have their bodies before the judges of our next county court, to be held at the court-house in the town of Cumberland, in said county, on the second Monday of October next, to answer unto Jonathan Huddleson, superintendent on that part of the United States road within the limits of the State of Maryland, in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable John Buchanan, chief judge of the said court, the 17th day of April, 1843. Issued the 27th day of September, 1843.

McKAIGS,
AZA BEALL, *Clk.*

At which said second Monday of October, and ninth day of the same month, in the year of our Lord one thousand eight hundred and forty-three, being the day of the return of the foregoing writ, comes into the county court here the said Jonathan Huddleson, superintendent as aforesaid, by his attorneys aforesaid, and the sheriff of Allegany

county aforesaid, to wit: Normand Bruce, gentleman, to whom the said foregoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit: Cepi, Lucius W. and James C.; non est, Moor and Daniel.

N. BRUCE, *Sheriff*.

And the said Lucius W. and James C. being called, appear in court here by William Price, esq., their attorney.

And thereupon the said Lucius W. and James C., by their said attorney, pray that the said Jonathan Huddleson, superintendent as aforesaid, may declare against them, the said Lucius W. and James C., in the plea aforesaid. Whereupon it is ruled by the court here, that the said Jonathan, superintendent as aforesaid, declare against the said Lucius W. and James C., in the plea aforesaid, or judgment will be rendered against him by default. And the said Jonathan, by his attorneys aforesaid, prays leave to imparle until the third Monday of April next, and he hath it; the same day is given to the said Lucius W. and James C., then and there, &c. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court thereon, is continued until the third Monday of April next.

At which said third Monday of April, being the fifteenth day of the same month, in the year of our Lord one thousand eight hundred and forty-four, comes again into court here, as well the said Jonathan, superintendent as aforesaid, by his attorneys aforesaid, as the said James C., by his attorney aforesaid. And thereupon the said James C., by his attorney, gives the court here to understand and be informed, that since the suing out of the original writ in this cause, and before this day, to wit, on —— ——, the said Lucius W. died, to wit, at the county aforesaid; and the said James C. then and there survived him, which the said Jonathan, superintendent as aforesaid, does not deny, but admits the same to be true. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, is further continued until the second Monday of October next.

At which said second Monday of October, and fourteenth day of the same month, in the year of our Lord one thousand eight hundred and forty-four, come into the court here, as well the said Jonathan, superintendent as aforesaid, by his attorneys aforesaid, as the said James C., by his attorney aforesaid; and thereupon the said Jonathan, by his attorneys aforesaid, declares against the said James C. in the plea aforesaid, in the words following, to wit:

STATE OF MARYLAND,
Allegany county, to wit:

Lucius W. Stockton and James C. Achison, late of Allegany county, were attached to answer unto Jonathan Huddleson, superintendent

on that part of the United States road within the limits of the State of Maryland, in a plea of trespass on the case, and so forth.

And whereas the said plaintiff, by Thomas J. McKaig, his attorney, complains that whereas, by virtue of a certain act of the general assembly of Maryland, passed on the twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-two, entitled "an act for the preservation and repair of that part of the United States road within the limits of the State of Maryland," and the several supplements thereto, the said plaintiff was appointed superintendent of that part of the United States road, commonly called the National road, within the limits of the State of Maryland, and gave his bond, with security to the State of Maryland, as required by the said acts of assembly. And the said plaintiff further saith, that by one of the supplements to the aforesaid act of the general assembly of Maryland, entitled "an act to amend the act entitled a supplement to an act entitled an act for the preservation and repair of that part of the United States road within the limits of the State of Maryland, passed on the tenth day of March, in the year eighteen hundred and forty-three, the said plaintiff was authorized and empowered, from the first day of April, in the year eighteen hundred and forty-three, to demand and receive, by the toll collectors on that part of the United States road within the limits of the State of Maryland, from the owner or owners of every passenger or mail coach, or stage, passing the gates on the said road, the sum of four cents for every passenger carried in the same for every space of ten miles on said road, and so in proportion to every greater or less distance, which should be taken and received in lieu of the tolls then established by law on all coaches or stages with four horses passing over said road; and that it should be the duty of the said proprietor or proprietors, his, her, or their agent, to furnish, under oath, on the first Monday of every month, to the gate-keeper at gate number one, a list showing the number of passengers transported over said road in their respective coaches, for the month next preceding the time when the said list was so to be returned; and that in the event of the said proprietors or agents failing or refusing to comply with the provisions of the said last mentioned act, then, and in that case, it shall be the duty of the gate-keeper at gate number one to demand of and receive from such proprietor or proprietors so failing the sum of one dollar for each and every stage coach passing over said road its entire length, and the duty of the said plaintiff as superintendent as aforesaid, to institute proceedings at law in the name of the said superintendent against the proprietors of all or any of the stage coaches upon their refusal or neglect to pay all tolls imposed by the last mentioned act. And the said plaintiff avers, that afterwards, to wit, on the twenty-fifth day of September, in year 1843, at Allegany county aforesaid, the said Lucius W. Stockton and James C. Achison, and also a certain Moore N. Falls, and Daniel Moore, late of said county, trading under the firm and style of Stockton, Falls and Company (which said Moore N. Falls, and Daniel Moore on the writ of the State of Maryland, of capias ad responden-

dum issued out of Allegany county court, at the suit of the said plaintiff, and to the sheriff of Allegany county directed, was returned by the said sheriff that they were not, nor was either of them, to be found within the bailiwick of the said sheriff,) were from the said first day of April, in the year eighteen hundred and forty-three, until the day of the commencement of this suit, owners and proprietors of passenger and mail coaches and stages passing the gates, and over the entire length of said road, and carried in the same a large number of passengers over the entire length of said road, to wit, at the county aforesaid.

And the said plaintiff further avers, that the said Lucius W. Stockton, James C. Achison, More N. Falls, and David Moore, trading under the firm and style of Stockton, Falls and Company, or their agent, did not furnish, under oath, on the first Monday of every month, or at any time whatsoever, to the gate-keeper at gate number one on said road, a list of the number of passengers transported over said road, or any part thereof, in their respective coaches and stages, as required by the said last mentioned act; nor did they pay the said sum of four cents for every or any passenger carried in the same, for every space of ten miles they were carried on said road, but wholly failed and refused so to do. By means whereof, and by force of the said act of assembly aforesaid, the said plaintiff of right ought to demand and receive from time to time, from the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style aforesaid, so failing to comply with the provisions of the said last mentioned act, the sum of one dollar for each and every stage coach passing over said road its entire length.

And the said plaintiff further avers, that four stages, of which the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style of Stockton, Falls and Company, were the owners and proprietors, on the said first day of April, eighteen hundred and forty-three, and four other stages on every other day, between that day and the day of the suing forth the original writ in this cause, passed over the said road its entire length, to wit, at the county aforesaid; by means whereof, and by force of the statutes aforesaid, the said Lucius W. Stockton, James C. Achison, Moore N. Fall, and Daniel Moore, trading under the firm and style as aforesaid, became indebted to the said plaintiff, as superintendent of the said road, in the sum of seven hundred and sixteen dollars current money, being at the rate or sum of one dollar for each and every time that each and every coach or stage of the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading as aforesaid, had passed over the said road its entire length, from the time the said last mentioned act of the general assembly went into effect and full force until the commencement of this suit; and being so indebted, they, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading as aforesaid, in consideration thereof, afterwards, to wit, on the twenty-fifth day of September, in the year eighteen hundred and forty-three, at Allegany county aforesaid, undertook, and then and there faithfully promised the

said plaintiff, to pay him the said sum of money, when they should be thereunto afterwards requested; and whereas, also, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style of Stockton, Falls and Company, afterwards, to wit, on the twenty-fifth day of September, in the year eighteen hundred and forty-three, at Allegany county aforesaid, were indebted unto the said plaintiff, as superintendent of that part of the United States road within the limits of the State of Maryland, in the sum of two thousand dollars, current money, for divers other tolls and duties before that time then and there due, and of right payable by and from the said Lucius W. Stockton, James C. Achison, Moor N. Falls, and Daniel Moore, trading as aforesaid, to the said plaintiff, for the passage of divers other passenger and mail stages and coaches, over the entire length of that part of the United States road, within the limits of the State of Maryland, from and after the first day of April, in the year eighteen hundred and forty-three, and during and until the day of the commencement of this suit; which said part of the said United States road, the said plaintiff, as superintendent thereof, hath from time to time preserved and repaired, and during all the time aforesaid hath kept in good repair; and being so indebted, they, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm aforesaid, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last mentioned sum of money when they should be thereunto afterwards requested.

And whereas, also, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style of Stockton, Falls and Company, to wit, on the twenty-fifth day of September, in the year 1843, at the county aforesaid, were indebted unto the said plaintiff in another sum of two thousand dollars, current money, for divers other tolls and duties due and of right payable to the said plaintiff, as superintendent ont hat part of the United States road within the limits of the State of Maryland, by the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style aforesaid, as owners of mail stages, for the passage of divers mail stages, with four horses, over the entire length of that part of the United States road within the limits of the State of Maryland; and being so indebted, they, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading as aforesaid, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last mentioned sum of money when they should be thereunto afterwards requested; nevertheless, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moore, trading under the firm and style of Stockton, Falls and Company, before the return of the sheriff aforesaid, or the said Lucius W. Stockton and James C. Achison since the said return, although often thereunto requested by

the said plaintiff, to wit, at the county aforesaid, have not paid the said several sums of money, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, they, the said Lucius W. Stockton, James C. Achison, Moore N. Falls, and Daniel Moor, have hitherto wholly neglected and refused, and the said Lucius W. Stockton and James C. Achison still do refuse, to the damage of said plaintiff in the sum of four thousand dollars, current money; and therefore he brings his suit, &c.

McKAIG & McKAIG,
Att'ys for plaintiff.

And thereupon, the said Jonathan, superintendent as aforesaid, by his attorney aforesaid, prays that the said James C. Achison may answer to the declaration of him, the said Jonathan, superintendent as aforesaid, in the plea aforesaid; whereupon, it is ruled by the court here, that the said James C. answer to the declaration of the said Jonathan, in the plea aforesaid, or judgment will be rendered against him by default. And the said James C., by his said attorney, defends the force and injury, when and so forth, and prays leave of the court here further to imparle until the third Monday of April next, and he hath it; the same day is given to the said Jonathan, then and there, &c.

At which said third Monday [of] April, being the twenty-first day of the same month, in the year of our Lord one thousand eight hundred and forty-five, come again in the county court here, as well the said Jonathan, by his attorneys aforesaid, as the said James C., by his attorney aforesaid; and the said cause was thereupon continued by regular continuances from term to term of the said court, from the said third Monday of April, in the year last aforesaid, until the third Monday of April, in the year eighteen hundred and forty-six.

At which third Monday of April, being the twentieth day of the same month, in the year of our Lord eighteen hundred and forty-six, comes again into court here as well the said Jonathan, by his attorneys aforesaid, as the said James C., by his attorney aforesaid, and filed in court here an agreement in the words and of the [figures] following, to wit:

Action of assumpsit in Allegany county court, April term, 1846.

JONATHAN HUDDLESON, superintendent of the National road within the State of Maryland,
vs.
L. W. STOCKTON, Moore N. Falls, and others.

The parties by their counsel agree the following to be the facts upon which the question of right depends:

The legislature of Maryland, on the 23d day of January, 1832, passed an act, entitled an "act for the preservation and repair of that part of the United States road within the limits of the State of Maryland,

being chapter 85, of the acts of December session, 1831, in the words and figures following, to wit:

"An act for the preservation and repair of that part of the United States road within the limits of the State of Maryland."

Whereas, that part of the United States road, lying within *of* the State of Maryland, is in many parts in bad condition for want of repairs, and as a large proportion of the people of this State are interested in said road and its preservation, therefore,

Sec. 1. Be it enacted by the general assembly of Maryland, that as soon as the consent of the Government of the United States shall have been obtained, as hereinafter provided, that part of the United States road, commonly called the National road, within the limits of the State of Maryland, shall be taken under the care of the State of Maryland, and the governor and council of the State shall be, and they are hereby, authorized to appoint a superintendent of that part of said road lying within the limits of this State, who shall hold his office for three years from the date of his commission, and who shall at the time of his appointment, and during his continuance in office, reside in Allegany county, whose duty it shall be to exercise all reasonable vigilance and *and* diligence in the care thereof; which superintendent, after his appointment, shall have full power and authority to build toll houses, and erect toll gates at suitable distances: Provided, the number of gates aforesaid, shall not exceed two on the whole distance within the limits of this State.

Sec. 2. And be it enacted, That for the purposes of keeping so much of the said road in repair, as lies within the limits of the State of Maryland, and paying the expenses of collection and other incidental expenses, the superintendent shall cause to be erected, on so much of the said road as lies within the limits of this State, a gate or gates, a toll-house or toll-houses, not exceeding two of each; and that as soon as said gates and toll-houses shall be erected, it shall be the duty of the toll collectors, and they are hereby required, to demand and receive for passing said gate the tolls hereafter mentioned, and they may stop any person riding, leading, or driving any horses, cattle, sulkey, chair, phæton, cart, chaise, wagon, sleigh, sled, or other carriage of burthen or pleasure, from passing through the said gates, until they shall respectively have paid for passing the same, that is to say, for every space of fourteen miles in length on said road, the following sums of money, and so in proportion for every greater or lesser distance, the rates of toll to be collected at each gate shall be the following, to wit, for every score of sheep or hogs, six cents; for every score of cattle, twelve cents; for every led or drove horse, three cents; for every horse and rider, four cents; for every slay or sled, for each horse or pair of oxen drawing the same, three cents; for every dearborn, sulkey, chair, or chaise with one horse, six cents; for every chariot, coach, coachee, stage, wagon, phæton, chaise, or other carriage, with two horses and four wheels, twelve cents; for either of the carriages last mentioned, with four horses, eighteen cents; for every other carriage of pleasure, under whatever name it may go, the like sum, accord-

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ing to the number of wheels and horses drawing the same; for every cart or wagon whose wheels shall exceed two and an half inches in breadth, and not exceeding four inches, four cents for every horse or pair of oxen drawing the same; and every other cart or wagon, whose wheels shall exceed four inches, and not exceeding five inches in breadth, three cents for every horse or pair of oxen drawing the same; and for every other cart or wagon whose wheels shall exceed six inches, and not more than eight inches, two cents for every horse or pair of oxen drawing the same; all other carts or wagons whose wheels shall exceed eight inches in breadth, shall pass the said gates *free* of tolls: Provided, that the superintendent, after he is appointed by this act, may commute the rates of toll with any person or persons, by taking of him or them a certain sum annually in lieu of the tolls aforesaid: And provided, also, that nothing in this act shall be construed so as to authorize any tolls to be received or collected from any person or persons passing or repassing from one part of his farm to another, or to or from a mill, or to or from any place of public worship, funeral, militia training, elections, or from any student or child going to or from any school or seminary of learning, or from persons and witnesses going to and returning from courts: And provided, further, that no tolls shall be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any cannon or military stores belonging to the United States, or to any of the States composing this Union.

Sec. 3. And be it enacted, That the said superintendent, after his appointment as aforesaid, shall appoint proper and suitable persons as toll gatherers, who shall settle their accounts every three months from the time of their appointments, and at all other times when thereunto required by the said superintendent, and shall at all times pay over to the said superintendent on demand, the amount of tolls by them or either of them collected; and the said superintendent shall have authority to remove any toll gatherer appointed by him for misbehavior in his office, and appoint another in his place; and it shall be the duty of the said superintendent to render semi-annually to the county court of Allegany county, at its fixed meetings by law, on the third Monday of April and second Monday of October, an account of tolls received and expenses incurred on said road, on oath or affirmation; which account, when ratified and confirmed by the said court, shall be published by the said superintendent, in some newspaper printed in Allegany county; and the said superintendent shall also, on or before the first Monday of December annually hereafter, transmit to the governor and council of this State a duplicate of his said accounts aforesaid, and it shall be the duty of the governor of this State to lay the same before the general assembly in his annual message. And the said superintendent shall receive a compensation of two dollars per day for every day that he shall [be] engaged on the business of the said road. Provided, that the annual compensation to said superintendent shall not exceed the sum of five hundred dollars.

Sec. 4th. And be it enacted, That the amount of tolls, after deduct-

ing therefrom the expenses and charges of collection and compensation of superintendent, shall be applied under the direction of said superintendent, to the repairs and preservation of said road, in such manner and under such regulations as he, from time to time, may prescribe and direct, and to no other purpose whatsoever.

Sec. 5. And be it enacted, That directions shall be set up at proper and convenient situations, to caution all conductors and drivers of carriages on the road aforesaid, that they shall at all times pass on the left of each other, under the penalty of two dollars for every offence.

Sec. 6. And be it enacted, That if any of the toll gatherers shall unreasonably delay or hinder any passenger or traveller at any of the gates, or shall demand or receive more toll than may be established by this act, he shall for each and every offence forfeit and pay to the party so aggrieved, the sum of twenty dollars.

Sec. 7th. And be it enacted, That if any person or persons shall wilfully and of purpose throw down, or otherwise injure, any of the walls, bridges, culverts, or other works on said road, or shall otherwise wilfully injure or obstruct the passage of said road unnecessarily, the person or persons so offending shall forfeit and pay, for every such offence, any sum not less than five or more than fifty dollars, to be collected and applied as is directed in the ninth section of this act.

Sec. 8th. And be it enacted, That the toll gatherers on said road shall respectively receive compensation for their services, at the rate of twelve per cent. on the amount of tolls by them respectively collected. Provided, that the annual compensation of any toll gatherer shall not exceed the sum of two hundred dollars.

Sec. 9th. And be it enacted, That the penalties and forfeitures which may be incurred under this act, shall and may be sued for and recovered in the name of the superintendent of that part of the United States road within the limits of the State of Maryland, without naming him as an individual, or of any person prosecuting the same, the one-half thereof to the use of the State of Maryland, the other to the person so prosecuting for the same, before a justice of the peace in Allegany county, as other small debts are recovered, with the privilege of an appeal to the county court, as in cases of small debts.

Sec. 10th. And be it enacted, That the toll gatherers shall exhibit their accounts, from time to time, to the superintendent, upon oath, as directed in this act; and they shall, moreover, before they act as toll gatherers, and annually thereafter, give bond with security, to the State of Maryland, in the penalty of one thousand dollars, to be approved by the superintendent, for the faithful performance of the duties devolving on them by this act, with a condition as follows, or to the following effect: "Now, the condition of the above obligation is such, that if the above bound ———— shall, at the end of every three months, from the time of receiving his appointment, and at all other times when thereunto required, pay over well and truly to the said superintendent, the whole amount of tolls by him collected as toll gatherer aforesaid,

then the above obligation to be void, otherwise to be in full force and virtue in law."

Sec. 11th. And be it enacted, That the said superintendent, before he acts as such, and annually thereafter, shall give bond to the State of Maryland, with such security as any one of the judges of the fifth judicial district shall approve, in the sum of four thousand dollars, with the following condition, or to the following effect: "Now, the condition of the above obligation is such, that if the above ———— shall well and faithfully discharge the duties of superintendent, and shall pay over, lay out, and expend all moneys which he may receive, as the superintendent of that part of the United States' road within the limits of this State as directed by this act, then the above obligation to be void, otherwise to be in full force and virtue in law."

Sec. 12th. And be it enacted, That if there shall be any surplus money in the hands of the said superintendent beyond the actual expenses for preserving and repairing the part of said road within the limits of this State, and paying the said superintendent and toll gatherers, and all incidental expenses, the said superintendent shall remit the same to the treasurer of the western shore, whose duty it shall be to receive the same, to be denominated on the treasury books, "The United States' road fund;" which money, constituting said fund, shall be applied solely and exclusively to the preservation, repair, and improvement of that part of said road within the limits of this State, and to no other use or purpose whatsoever.

Sec. 13th. And be it enacted, That this act shall not have any force or effect until the Congress of the United States shall assent to the same, and until so much of the said road as lies within the limits of the State of Maryland, be first put in good and complete state of repair, by an appropriation made by the Congress of the United States to repair the same, or to pay the expenses of building a toll-house or toll-houses, and erecting a toll-gate or toll-gates, to be built and erected by the superintendent appointed by the governor and council of this State, to be expended under the authority of a superintendent, to be appointed by the President of the United States. Provided, the general assembly of this State may, at any future session thereof, change, alter, or amend this act, so as [to] regulate the amount of tolls. Provided, that the same shall not be so altered or amended, as to reduce or increase the rates of tolls hereby established, below or above a sum necessary to defray the expenses incident to the preservation and repair of said road, for the payment of the fees and compensation to the superintendent, collectors of tolls, and other agents. And provided, that no change, alteration, or amendment shall ever be adopted, that will, in any wise, defeat or affect the true intent and meaning of this act.

Sec. 14th. And be it enacted, That in case any superintendent, who shall be appointed under this act, shall die, resign, refuse to act, or remove from Allegany county aforesaid, the governor and council of this State shall appoint another in his place, who shall, at the time of his appointment and during his continuance in office, reside in Allegany

county, and who shall hold his office for three years from the date of his commission, and after the expiration of any time of service of any superintendent who may be appointed under this act, the governor and council of this State shall re-appoint another in his place, at discretion. Provided, that he shall not serve for a longer time than three years from the date of his commission. The Congress of the United States, by an act approved July 3d, 1832, entitled "An act making appropriations for certain internal improvements for the year 1832, gave the assent of Congress to the provisions of the aforesaid act of the legislature of Maryland, in the words following, to wit: 'And of an act of the general assembly of the State of Maryland, entitled 'An act for the preservation and repair of that part of the United States' road within the limits of the State of Maryland, passed the twenty-third day of January, one thousand eight hundred and thirty-two; to which said acts the assent of the United States is hereby given, to remain in force during the pleasure of Congress.'"

It is admitted that the defendants, during the whole time for which the charge for the transit of stages upon the said United States' road is made, as mentioned in the declaration of the plaintiff, were the carriers of the United States' mails upon and over the said road. That the said mails were so carried in four-horse post coaches, under the contract with the Postmaster General of the United States and the said defendants; which contract is in the words and figures following, viz:

POST OFFICE DEPARTMENT, *October 15th*, 1845.

I certify that the annexed is a true copy of a contract, with schedules and bond attached, on file in the Department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post Office Department to be affixed, at the General Post Office, in the city of Washington, this 15th day of October, 1845.

[L. S.]

C. JOHNSON,
Postmaster General.

No. 1,955, $25,700 per annum.

This indenture of contract, made the 5th day of September, in the year one thousand eight hundred and thirty-nine, between Lucius W. Stockton, Charles W. Krebs, and Moore N. Falls, of Baltimore, Maryland, contractors for carrying the mails of the United States, of one part, and the United States of America of the other part, witnesseth, that the said parties have mutually covenanted as follows, viz. The said contractors covenant with the said United States—

1. To carry the mail of the United States from Cumberland, Md., by Frostburgh, Little Crossings, Addison, Pa., Somerfield, Bryant's, Uniontown, Brownsville, East Bethlehem, Bealsville, Hillsboro', Washington, Claysville, West Alexander, and Triadelphia, Va., to Wheeling and back, daily, in four-horse coaches, constructed under the directions of the Department exclusively for the mails, except an outside

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seat for the accommodation of three passengers (with reservation of power to order two lines at $24,700) at the rate of six thousand and four hundred and twenty-five dollars, for every quarter of a year, during the continuance of this contract, to be paid by postmasters on the route above mentioned, or otherwise at the option of the Postmaster General of the United States, in the months of May, August, November, and February.

2d. That the mail shall be duly delivered at and taken from each post office now established, or that may be established, on the route embraced in this contract; that it shall be conveyed on this route in the time specified in the annexed schedule, and in a secure manner, free from wet or other injury, in a secure dry boot or box under the driver's seat, if the mail is carried by a stage or coach, or under a sufficient oil cloth or bear skin, when carried on horse back or sulkey, as hereinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route, and into the post office at the place at which the carrier stops at night if one is there kept, and if no office is there kept, it shall be locked up in some secure place at the contractor's risk.

3d. That if the contractors shall run a stage, or other vehicle, more rapidly, or more frequently, than they are required by the contract to carry the mail, they shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4th. That the contractors, if on a stage or coach route, shall, in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines, over those travelling in any other; so that connecting mail stage routes shall form continuous travelling lines, and shall convey, free of charge, all accredited agents of the Department, also mail bags and Post office blanks.

5th. That they shall not, by themselves or their agent, transmit, or be concerned in transmitting, commercial intelligence more rapidly than by mail.

6th. That the contractors will, if required by the postmaster general, collect quarterly, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post Office all balances remaining in their hands.

7th. That in every case of failure to perform the trip, whatever may be the cause, there may be a forfeiture to pay for the trip, and a failure to arrive at a post office so long after the time set in the schedule, as to lose the connexion with a depending mail, shall be considered as equal to a whole trip lost, which forfeiture may be increased to a penalty not exceeding one hundred dollars, according to the circumstances under which the failure occurred.

8th. That the contractors shall be subject, for failure to take or deliver a mail, or any part of a mail, for suffering the mail to be wet, or otherwise injured, or lost, or destroyed, to a penalty of five dollars, which may be increased to one hundred dollars, according to the size

or importance of the mail, and the circumstances under which the failure occurred.

9th. That a fine not less than the tenth part, and not exceeding the half of the price of a trip, may be imposed for each ten minutes delay of the mail to arrive at the time specified in the schedule.

10th. That the contractors shall be answerable for the persons to whom they shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care; and that they will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11th. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time, on allowing the like extension to the contractors, if they shall claim it.

12th. That the Postmaster General may alter the schedule and alter the route, he allowing a pro rata increase of compensation for any additional service required, and for any increased speed, when the employment of additional stock of carriers is rendered necessary.

13th. That the Postmaster General may curtail the service, or dispense with it entirely, he allowing one month's extra pay upon the amount deducted in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege to the contractors on the route of performing such service on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service, or to leave such route, *or to leave such a route* or any part of it, out of operation, or to carry the mail by steamboat or railroad cars, provided that reduction of compensation in consequence of reduction of service shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14th. That the Postmaster General may annul the contract for repeated failures of the contractors performing of the stipulations of the contract, without the consent of the Postmaster General first obtained.

15th. The said United States covenant with the said contractors to pay, as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November, and February.

Provided always, that this contract shall be null and void in case the contractors, or any person that may become interested in this contract, directly or indirectly, shall become a postmaster or an assistant postmaster. No member of Congress shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed, by the said parties, that

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this contract shall commence on the first day of July, 1840, and continue in force until the thirtieth day of June, in the year 1844.

In witness whereof the said contractors and the Postmaster General have hereunto set their hands and seals the day and year set opposite their names respectively.

(Signed)	L. W. STOCKTON,	[L.S.]	June 20th, 1840.
(Signed)	C. W. KREBS,	[L.S.]	June 15th, 1840.
(Signed)	M. N. FALLS,	[L.S.]	June 15th, 1840.

Signed, sealed, and delivered, in the presence of
(Signed) R. H. CUMMING,
For Chas. W. Krebs and M. N. Falls.
(Signed) R. L. BARRY,
For signature of L. W. Stockton.

This schedule, subject to alterations by the Postmaster General, agreeably to the provisions contained in the 12th section of the contract.

1 November, 1843.

Leave Cumberland daily, at 7½, *3½, p. m., 10 p. m.
Arrive at Wheeling next day by 4½, *12½ m., 7 p. m.
Leave Wheeling daily at 6½, *8 a. m.
Arrive at Cumberland next day by 3½, *5 a. m.
18th September, 1840; *December 15th, 1840; 24th October, 1843.

Leave Cumberland daily at 9½ a. m., 10 p. m.
Arrive in Wheeling next day by 6½ a. m., 7 p. m.
Leave Wheeling daily at 8 a. m.
Arrive at Cumberland next day by 5 a. m.
25th May, 1841; 9th November, 1842.

1841, December 9th, the following schedule, ordered without additional cost to the Department:

Leave Cumberland daily at 3 a. m. and 11 a. m.
Arrive at Wheeling same day by 12 p. m., and next day at 8 a. m.
Leave Wheeling daily at 8 a. m.
Arrive at Cumberland next day at 5 a. m.

Know all men by these presents, that we, Lucius W. Stockton, Charles W. Krebs, and Moore N. Falls, as principal, and William Krebs, as sureties, are held and firmly bound unto the United States of America, in the just and full sum of fifty-one thousand four hundred dollars, value received, to be paid unto the United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated the twentieth day of June, in the year of our Lord one thousand eight hundred and forty.

The condition of this obligation is such, that whereas the above bounden L. W. Stockton, Charles W. Krebs, and M. N. Falls, by a certain indenture of contract, executed on an even date herewith, covenanted with the said United States to carry the mail of the United

States, from Cumberland, Maryland, to Wheeling, Virginia, and back, as per contract annexed, commencing this first day of July, one thousand eight hundred and forty, and ending the thirtieth day of June, which will be in the year one thousand eight hundred and forty-four.

Now, if the said L. W. Stockton, Ch. W. Krebs, and M. N. Falls, shall well and truly perform the covenants in the indenture expressed on their part to be performed, and shall account for all penalties, and shall promptly repay all balances that may at any time be found due from them, then this bond is to be void, otherwise remain in full force.

(Signed) L. W. STOCKTON, [L.S.] June 20th, 1840.
(Signed) CHAS. W. KREBS, [L.S.] June 15th, 1840.
(Signed) M. N. FALLS, [L.S.] June 15th, 1840.
(Signed) WM. KREBS, [L.S.]

Signed, sealed, and delivered in the presence of—
(Signed) R. H. CUMMING,
For Charles Krebs and M. N. Falls.
(Signed) R. L. BARRY,
For signature of L. W. Stockton.
For Wm. Krebs,
(Signed) A. WALTEE.

POST OFFICE DEPARTMENT, *Oct.* 20, 1845.

I hereby certify that the annexed is a true copy, taken from the records of this Department, of a letter sent to Messrs. Stockton, Falls & Co.

In testimony whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, at the [SEAL.] General Post Office, in the city of Washington, this 20th day of October, 1845.

C. JOHNSON,
Postmaster General.

POST OFFICE DEPARTMENT,
Contract Office, 10*th Dec.*, 1845.

SIR: The following is the schedule for route No. 1,955, recently ordered by the Postmaster General, with the understanding that the same be no additional expense to the Department:

Leave Cumberland daily at 3 a. m. and 11 a. m.
Arrive at Wheeling same days by 12 p. m., and next day by 8 a. m.
Leave Wheeling daily at 8 a. m.
Arrive at Cumberland next day by 5 a. m.

Fines will be imposed for all failures to convey the mail in the time above prescribed, unless satisfactorily explained, with proper proof. Copies of this schedule are furnished to the postmasters at the ends of the route, and they are required to report every failure to the Third Assistant Postmaster General.

Respectfully, your obedient servant,
S. R. HOBBIE,
First Assistant Postmaster General.

To Messrs. STOCKTON, FALLS & Co., *Baltimore, Md.*

That the legislature of Maryland on the 10th day of March, 1843, passed an act, entitled "an act to amend the act entitled a supplement to the act entitled an act for the preservation and repair of that part of the United States road, within limits of the State of Maryland, in the words and figures following, viz:

"An act to amend the act entitled a supplement to an act entitled an act for the preservation and repair of that part of the United States road within the limits of the State of Maryland."

Section 1. Be it enacted, by the general assembly of Maryland, that from and after the passage of this act there shall be demanded and received by the toll collectors on that part of the United States road, within the limits of the State of Maryland, from the owner or owners of every passenger or mail coach or stage passing the gates on said road, the sum of four cents for every passenger, *carsenger*, carried in the same, for every space of ten miles on said road, and so in proportion for every greater or less distance, which shall be taken and received in lieu of the tolls now established by law on all coaches or stages with four horses passing over said road, and which shall be collected, paid out, and expended as other tolls on said road are collected, paid out, and expended under existing laws.

Sec. 2. And be [it] enacted, That it shall be the duty of the proprietor or proprietors, his, her, or their agent, to furnish under oath, on the first Monday, *of every Monday* of every month to the gate keeper at number one, a list showing the number of passengers transported over said road in their respective coaches, for the month next preceding the time when said list is so returned.

Sec. 3. And be it enacted, That in the event of said proprietors or agents failing or refusing to comply with the provisions of the second section of this act, then and in that case it shall be the duty of the gate-keeper, at gate number one, to demand of, and receive from, such proprietor or proprietors so failing the sum of one dollar for each and every stage coach passing over said road its entire length.

Sec. 4. And be [it] enacted, That the superintendent of said road may, and it is hereby declared to be his duty to institute proceedings at law, either in the county court or before a justice of the peace, against the proprietors of all or any of the stage coaches, upon their refusal or neglect to pay all tolls imposed by this act, and said proceedings at law shall be instituted and maintained in the name of the said superintendent; and in case of the owners of said stage coaches, residing without the limits of Alleghany county, a service of the warrant of capias upon the driver of said coaches shall be sufficient; provided, in case the service shall be made upon the driver, it shall be competent for the owner or owners of said coaches, on motion, to be made parties to such proceedings and to defend such suits.

Sec. 5th. And be it enacted, That it shall be the duty of said gate-keeper at gate No. 1 to keep an accurate account of the number of times said coaches shall pass said gates monthly.

Sec. —. And be it enacted, That all acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Sec. 7th. And be it enacted, That this act shall go into effect and be of full force on the first day of April next.

It is agreed that the stage coaches, for which the sum of one dollar each is sought to be recovered in this action, were four-horse stage coaches, used and employed by the defendants in the transportation of the United States mails, under the contract in that behalf before mentioned, and that the passengers for the failure of the defendants to furnish the lists of whom, under the act of legislature of Maryland last above mentioned, the said sum of one dollars per stage coach is charged and demanded in this action, were passengers transported in the said coaches, carrying the said United States mails as aforesaid.

It is further admitted, that the number of coaches in which the said mails were carried, were necessary for the said carriage of the said mails, and that there was no unfairness nor fraud, on the part of the defendants, in dividing the said mails so as to use a greater number of coaches for the carriage of said mails than were actually necessary for such purpose.

It is further admitted, that the defendants did carry passengers daily in the said four-horse coaches, and that the said defendants did not comply with the provisions of the second section of the act of the general assembly of Maryland aforesaid, passed on the 10th day of March, 1843, as aforesaid, by returning a list on the first Monday of every month, or at any other time, showing the number of passengers thus transported over the said road in the said coaches. It is admitted that the said acts of assembly of Maryland did not increase the tolls above a sum necessary to defray the expenses incident to the preservation and repair of said road.

If, upon this statement of facts, the court shall be of opinion that the plaintiff is entitled to recover, either upon the present declaration or upon an amended declaration, for the four cents per passenger for every ten miles, the judgment to be entered for the plaintiff for seven hundred and sixteen dollars. If the court shall be of opinion that the plaintiff is not entitled to recover in either case, then judgment to be given for the defendants; either party to be at liberty to appeal to the court of appeals, or sue out a writ of error.

THOMAS J. McKAIG, *Attorney for Plaintiff.*
WILLIAM PRICE, *for Defendants.*

May 18th, 1846; ordered, upon the above statement of facts, that judgment be entered pro forma for the plaintiff for the amount agreed upon in the above statement.

Test: HENRY BRUCE, *Cl'k.*

Memorandum: Judgment was rendered in this cause on the 18th day of May, in the year 1846, for $4,000 damages and costs, the said damages to be released on the payment of $716.00 with interest from the 18th day of May, 1846, and costs, $54.02½.

Test: HENRY BRUCE, *Cl'k.*

And thereupon the said James C. Achison, by his attorney aforesaid, prays an appeal from the judgment of the court here, so as aforesaid rendered to the court of appeals, to be holden for the western shore of the State of Maryland, *an* to him it is granted. It is thereupon ordered by the court here, that a transcript of the record and proceedings in this cause, with all things thereunto relating, be transmitted to the court of appeals, to be held for the western shore of the State of Maryland, and the same is transmitted accordingly.

Test: HENRY BRUCE, *Cl'k.*

ALLEGANY COUNTY, *sc.*

I hereby certify that the aforegoing is a true copy taken from record *of* and proceedings in the cause aforesaid of the county court [L. S.] of Allegany. In testimony whereof this exemplification I hereunto set my hand and affix the seal of county aforesaid this 8th day of July, 1846.

Defendant's costs, $15 63
Costs of record, 15 07

$30 70 cts.

And now come into the court of appeals here, as well the said James C. Achison, by John Nelson and William Price, his attorneys, as the said Jonathan Huddleson, superintendent of that part of the United States road within the limits of the State of Maryland, by Thomas J. McKaig, his attorney; and thereupon, on motion of the said Jonathan Huddleson, superintendent as aforesaid, by his attorney aforesaid, it is ruled by the court here, that the said James C. Achison assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the court of appeals here, for correcting the errors supposed to be therein, or judgment by the court of appeals here will be entered against him in default thereof: and the said James C. Achison, by his attorneys aforesaid, says, that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said Jonathan Huddleson, superintendent as aforesaid, against the said James C. Achison, when by the law of the land that judgment ought to have been given for the said James C. Achison against the said Jonathan Huddleson, superintendent as aforesaid; therefore, in that there is manifest error, and he prays that the judgment aforesaid for that error, and others being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that he, the said James C. Achison, may be restored to all things which he hath lost by occasion of the said judgment; and that the said Jonathan Huddleson, superintendent as aforesaid, may rejoin to the errors aforesaid, and so forth. And thereupon it is ruled by the court of appeals here, that the said Jonathan Huddleson, superintendent as aforesaid, join in the errors by the said James C. Achison above as-

signed in the record of proceedings aforesaid, or judgment by the court of appeals here will be rendered against him in default thereof; and the said Jonathan Huddleson, superintendent as aforesaid, by his attorney aforesaid, prays that a day may be given to him to join in the errors by the said James C. Achison above assigned in the record of proceedings aforesaid, until the first Monday in December next; and to him it is granted; the same day is also given to the said James C. Achison. At which said first Monday in December, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and forty-six, which said day was given to the said Jonathan Huddleson, superintendent as aforesaid, to join in the errors by the said James C. Achison above assigned, come again into the court of appeals here the parties aforesaid, by their attorneys aforesaid; and the said Jonathan Huddleson, superintendent as aforesaid, by his attorney aforesaid, says, there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and he prays that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said James C. Achison above for error assigned, and that the said judgment may be in all things affirmed, and so forth. Thereupon further process of and upon the premises, between the parties aforesaid, is by virtue of an act of assembly in such case made and provided, further continued before the court of appeals here until the second Monday in June next; the same day is given to the said parties there, then to hear the judgment of the court of appeals here, of and upon the said premises, and so forth.

At which said second Monday in June, being the fourteenth day of the said month, in the year of our Lord one thousand eight hundred and forty-seven, come again into the court of appeals here, the parties aforesaid, by their attorneys aforesaid. But because the court of appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attorneys aforesaid, to come before the court of appeals here, on the first Monday in December next, to hear the judgment of the court of appeals here of and upon the premises; for that the court now here, as yet are not, &c.

At which said first Monday in December, being the sixth day of the said month, in the year of our Lord one thousand eight hundred and forty-seven, come again into the court of appeals here the parties aforesaid, by their attorneys aforesaid. And the said parties, by their attorneys aforesaid, file in court here an agreement, and which said agreement is in the words and of the tenor following, to wit:

JONATHAN HUDDLESON, superintendent of that part of the United States road within the limits of the State of Maryland,
vs.
LUCIUS W. STOCKTON and James C. Achison.

Appeal from judgment in Allegany county court.

We hereby agree that the record in the above case (not heretofore

filed by mistake) may be filed, and the case placed on the trial calendar of the court of appeals for the Western Shore, of the December term, 1847; said record to be filed nunc pro tunc, and to have the same effect as if filed at the regular time.

Annapolis, January 7th, 1848.

JNO. NELSON,
Atty. for appellant.
THOMAS J. McKAIG,
Attorney for appellee.

But because the court of appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attorneys aforesaid, to come before the court of appeals here, on the second Monday in June next, to hear the judgment of the court of appeals here of and upon the premises; for that the court now here, as yet, are not, &c.

At which said second Monday in June, being the twelfth day of the said month, in the year of our Lord one thousand eight hundred and forty-eight, come again into the court of appeals here the parties aforesaid, by their attorneys aforesaid. But because the court of appeals here are not yet advised what judgment to give of and upon the premises, a day therefore is further given to the parties aforesaid, with the consent of the said parties, by their attorneys aforesaid, before the court of appeals here, until the first Monday in December next, to hear the judgment of the court of appeals here of and upon the premises; for that the court now here, as yet, are not, &c.

And now, at this day, to wit, the said first Monday in December, being the fourth day of the said month, in the year of our Lord one thousand eight hundred and forty-eight, came again into the court of appeals here the parties aforesaid, by their attorneys aforesaid; whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said James C. Achison above for error assigned, being seen and by the court of appeals here fully understood, and mature deliberation thereupon had; for that it appears to the court of appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid: Therefore it is considered by the court of appeals here that the judgment aforesaid, given in form aforesaid, be in all things affirmed, and stand in full force and effect; the said causes for error above assigned and alleged in anywise notwithstanding.

And it is further considered by the court of appeals here, that the said Jonathan Huddleson, superintendent as aforesaid, have execution against the said James C. Achison, as well for his costs and charges aforesaid, adjudged unto him in the said county court of Allegany, as also the sum of fifty-two dollars and twenty-six cents, adjudged unto the said Jonathan Huddleson, superintendent as aforesaid, by the court of appeals here, on his assent, for his costs and charges which he had

sustained by occasion of the delay of the execution of the judgment aforesaid, by pretext of the prosecution of the said appeal, by the said James C. Achison, for the correcting of errors of and upon the premises as aforesaid prosecuted, &c.

Test: R. W. GILL, *Clerk.*

And afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and forty-nine, the aforesaid James C. Achison, by his attorney aforesaid, produces to the court of appeals here the writ of the United States for the correction of errors of and upon the premises, commanding the record of proceedings and judment last aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States; which said writ of error is in these words:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the court of appeals for the western shore of Maryland, greeting:

{The seal of the circuit court, Md.} Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the court of appeals for the Western Shore of the State of Maryland, before you, or some of you, wherein James C. Achison is plaintiff in error and Jonathan Huddleson is defendant in error, a manifest error hath happened, to the great damage of the said James C. Achison, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-eight.

THOS. SPICER, *Clerk,*
Circuit court, U. S., for Md., E. Dist.

Issued 17th Nov., 1849. Allowed.

R. B. TANEY.

Filed 3d December, 1849.

And the said James C. Achison, on the day and year last aforesaid, also produces to the court here the writ of error bond relating to the writ of error aforesaid, which said bond is in these words:

Know all men by these presents, that we, James C. Achison, Moor N. Falls, and Howard Kennedy, are held and firmly bound unto Jonathan Huddleson, superintendent of that part of the United States road within the limits of the State of Maryland, in the just and full sum of eight thousand dollars, lawful money of the United States, to be paid to the said Jonathan Huddleson, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this sixteenth day of November, eighteen hundred and forty-nine.

Whereas at a term of the court of appeals, for the Western Shore of the State of Maryland, commenced and held at the city of Annapolis, on the first Monday of December, eighteen hundred and forty-eight, judgment was, on the thirty-first day of January, eighteen hundred and forty-nine, rendered by said court in favor of the said Jonathan Huddleson, against the said James C. Achison for four thousand dollars, current money, damages, and fifty-four dollars and two and two-thirds cents costs; to be released upon the payment of seven hundred and sixteen dollars, with interest thereon from the eighteenth day of May, eighteen hundred and forty-six, until paid, and the above costs *and costs;* and the said James C. Achison has sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, the condition of the foregoing obligation is such, that if the above bound James C. Achison shall prosecute his said writ of error with effect, and shall well and truly pay and satisfy the amount of said judgment, and all such costs as the said Supreme Court of the United States adjudge in the premises, if he, the said James C. Achison, shall fail to make his plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

J. C. ACHISON, [SEAL.]
M. N. FALLS, [SEAL.]
HOWARD KENNEDY. [SEAL.]

Signed, sealed, and delivered in presence of—
S. M. SHOEMAKER.

I know the parties obligors to the foregoing bond, and believe the sureties to be amply sufficient for the penalty thereof.

Baltimore, June 17th, 1849.

JOHN NELSON.

Approved Nov. 17, 1849.

R. B. TANEY.

Filed 3d Dec., 1849.

In pursuance whereof, and according to the form and effect of the act of Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment last afore-